

No. 83-1764

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In The
Supreme Court of the United States
October Term, 1983

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L. D. BUTLER, INC., A CORPORATION,

Appellant,

vs.

PHILIP R. ASHLEY, INDIVIDUALLY AND DOING
BUSINESS AS PHIL ASHLEY TRUCKING,

Appellee.

—○—
On Appeal from the Court
of Appeal of the State of California

—○—
MOTION TO DISMISS
—○—

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May 23, 1984

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PHILIP R. ASHLEY, INDIVIDUALLY AND DOING
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**On Appeal from the Court
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MOTION TO DISMISS

The Appellee moves the Court to dismiss the appeal herein on the ground that it is manifest that the question raised by Appellant is so unsubstantial as not to need further argument. In addition, the question has become moot.

I.

THE PROCEEDINGS BELOW

On June 9, 1982, the Los Angeles County Superior Court entered summary judgment for Appellee and against Appellant on the freight undercharge case which Appellee commenced on August 10, 1979. In pretrial discovery, Appellant had previously admitted: (1) hiring Appellee's intrastate transportation services, (2) that said services were governed by an applicable California Public Utilities Commission Minimum Rate Tariff, and (3) that Appellant had paid a rate less than that prescribed by the tariff. Appellant's only defense was its argument that the applicable tariffs were violative of the Sherman Anti-Trust Act (15 U.S.C. § 1, *et. seq.*).

Appellant appealed to the California Court of Appeal, Second Appellate District, and again raised its Sherman Act argument. In a well-reasoned opinion, which considered all of this Court's opinions on the subject, the Court of Appeals determined that the applicable tariffs were not violative of the Sherman Act and affirmed the trial court's summary judgment. On February 27, 1984, the California Supreme Court denied Appellant's petition for hearing, thereby rendering the Court of Appeal's decision final. This appeal followed.

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II.

ARGUMENT

- A.** The appeal presents no substantial question not previously decided by this Court.

Review of the written decision by the California Court of Appeals¹ clearly demonstrates that the Court carefully considered all of this Court's decisions on the subject and correctly determined that the applicable minimum rate tariffs were not violative of the Sherman Act. Because the Court below decided this issue in full conformance with this Court's prior decisions on the subject, this appeal does not present a substantial federal question which has not already been decided by this Court and should therefore be dismissed. *Palmer Oil Corp. vs. Amerada Petroleum Corp.*, 343 U.S. 390, 391-392 (1952).

B. The question raised in this appeal is moot.

As stated in Appellant's jurisdictional statement, the appeal herein seeks a determination as to whether California Public Utilities Commission Minimum Rate Tariffs 8 and 8A were violative of the Sherman Anti-Trust Act. However, at page 4 of its jurisdictional statement, Appellant further explains that "between the date of the order granting summary judgment and the date of the oral argument before the California Court of Appeal, the California Public Utilities Commission on June 29, 1983, cancelled the tariff" Thus, Appellant fully acknowledges that the very tariff it complains was in violation of the Sherman Act no longer exists. It has long been recognized that this Court does not sit to decide arguments after events have put them to rest. Accordingly, this appeal should be dismissed as moot. *United States vs. Alaska Steamship Co.*, 253 U.S. 113, 116 (1920); *Doremus vs. Board of Ed. of Borough of Hawthorne*, 342 U.S. 429, 432-433 (1952).

¹Printed in full at pages 1 through 11a of Appellant's jurisdictional statement appendix.

III.

CONCLUSION

Wherefore, Appellee respectfully submits that the question raised by this appeal is so unsubstantial as not to need further argument and has also been rendered moot by the cancellation of the applicable tariffs Appellant complains from. Appellee respectfully moves the Court to dismiss this appeal.

Respectfully submitted,

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